

CS



# Fair Shake

Environmental Legal Services

## Pittsburgh

3445 Butler Street,  
1st Floor  
Pittsburgh, PA 15201

(412) 742-4615  
(412) 291-1197 (fax)

## Akron

159 S. Main Street,  
Suite 1030  
Akron, OH 44308

(234) 571-1970  
(330) 319-8856 (fax)

A new climate of fairness.

2016 MAR 16 PM

OFFICE  
EXECUTIVE S

March 10, 2016

*Sent by Certified First Class U.S. Mail, return receipt requested*

Kellie and Mario DiBattista  
295 Bower Hill Road  
Venetia, PA 15367

Re: Notice of Intent to File a Citizen Suit for Ongoing Violations of the Clean Water Act, the Pennsylvania Clean Streams Law, and the Pennsylvania Dam Safety and Encroachments Act

Dear Kellie and Mario DiBattista:

This letter provides notice that Mrs. Trudi Alexander, Mr. Peter Alexander, Mrs. Janet Orawiec, and Mr. Rudy Orawiec (Neighbors), all of whom are represented by Fair Shake Environmental Legal Services, intend to file a civil action against you for violations of the federal Clean Water Act (CWA), the Pennsylvania Clean Streams Law (CSL), and the Pennsylvania Dam Safety and Encroachments Act (DSEA) (all three together: Clean Water Laws).<sup>1</sup> Such violations relate to your having filled or placed an encroachment on a wetland or stream on your property without the appropriate permits. Neighbors allege that you filled a wetland on your property without the appropriate permit required by the Clean Water Laws. Neighbors also allege that you placed a culvert in a stream without the appropriate permits required by the Clean Water Laws. These activities violate the Clean Water Laws, which among other things prohibit the discharge of "any pollutant by any person" except where authorized by a valid National Pollutant Discharge Elimination System (NPDES) Permit<sup>2</sup>, and prohibit water obstructions and encroachments without a valid permit.<sup>3</sup> This notice is provided pursuant to the Clean Water Laws.<sup>4</sup>

Your violations of the Clean Water Laws have harmed and will continue to harm Neighbors so long as they are unabated. In response to the above violations, at the conclusion of the sixty-day notice period, Neighbors intend to file a civil action in state or federal court against you pursuant to the CWA or the CSL or both. This civil action will seek to enjoin violations, ensure future compliance, impose civil penalties for violations on a per day per violation basis, and obtain any other relief which the

<sup>1</sup> 33 U.S.C.A. §§ 3351 et seq.; 35 P.S. §§ 691.1 et seq.; 32 P.S. §§ 693.1 et seq.

<sup>2</sup> 33 U.S.C. § 1311; 35 P.S. §§ 691.301, 691.401, 691.402.

<sup>3</sup> 32 P.S. § 693.6.

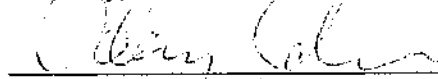
<sup>4</sup> 33 U.S.C. § 1365(b); 35 P.S. § 691.601(e).

Notice of Intent to File Civil Action  
Kellie and Mario DiBattista  
March 10, 2016  
Page 2 of 3

court sees fit. As authorized by both the CWA and the CSL, this action will also seek to recover litigation costs, including attorney and expert witness fees.<sup>5</sup>

Neighbors' strong preference has been and continues to be to resolve these issues out of court. During the next sixty days, Neighbors welcome negotiations to achieve such resolution.

Sincerely,



Oday Salim, Esq.

osalim@fairshake-els.org

PA Attorney Bar No. 309542

David E. Armstrong, Esq.

darmstrong@fairshake-els.org

PA Attorney Bar No. 316637

Fair Shake Environmental Legal Services

3495 Butler Street, Suite 102

Pittsburgh, PA 15201

(412) 742-4615 office

(412) 291-1197 fax

cc:

*By Certified First Class U.S. Mail, return receipt requested*

Regina A. McCarthy, Administrator  
U.S. Environmental Protection Agency  
USEPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, DC 20460

Shawn M. Garvin, Administrator  
Region 3  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

John Quigley, Secretary  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building  
400 Carson Street  
Harrisburg, PA 17101

---

<sup>5</sup> 33 U.S.C. § 1365(d); 35 P.S. § 691.601(g).

Notice of Intent to File Civil Action  
Kellie and Mario DiBattista  
March 10, 2016  
Page 3 of 3

*First Class U.S. Mail*

Chris Kriley, Clean Water Environmental Program Manager  
DEP Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA 15222

*By email (courtesy copy)*

Rhonda J. Sudina, Esq.  
Robb Leonard Mulvihill LLP  
BNY Mellon Center  
500 Grant Street, Suite 2300  
Pittsburgh, PA 15219  
RSudina@rlmlawfirm.com  
jzito@rlmlawfirm.com